

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**WESTPORT INSURANCE
CORPORATION,**

Plaintiff

v.

**RICHARD C. HEIDLAGE; KOTIN,
CRABTREE AND STRONG, LLP;
CHARLES N. ZALIS; and NORTH
AMERICAN UNDERWRITING
MANAGERS, INC.,**

Defendants.

Case No. 1:05 CV 11780 NMG

JOINT SCHEDULING STATEMENT OF THE PARTIES

Westport Insurance Corporation (“Westport”), Richard C. Heidlage (“Heidlage”), and Kotin, Crabtree and Strong, LLP (“KCS”) by their undersigned counsel, propose the following Joint Scheduling Statement:

I. Nature of the Case

Westport seeks a declaration that it has no duty to defend or indemnify Richard C. Heidlage (“Heidlage”) in a legal malpractice action in which his defense is being jointly funded by Westport and Great American Insurance Company. The Westport policy was issued to Kotin, Crabtree & Strong, LLP, with whom Heidlage became associated in an of counsel capacity on May 1, 2002. Prior to that date, Heidlage was of counsel to Prince, Lobel, Glovsky & Tye, LLP, Great American’s named insured.

The Westport policy contains an endorsement excluding coverage for claims based on alleged acts, errors or omissions committed by Heidlage prior to May 1, 2002. Westport contends that on the basis of testimony of the plaintiff in the malpractice action, the allegations

of the malpractice complaint, and court orders and rulings in the lawsuit from which the malpractice action arose, any malpractice on the part of Heidlage occurred prior to May 1, 2002, and therefore the Westport policy does not provide coverage for the underlying legal malpractice action.

Defendant Heidlage contends that the matter of Westport's obligations to defend and indemnify him must be determined from the allegations of the complaint. The first amended complaint alleges that the litigation with respect to which the alleged malpractice occurred "was maintained from January, 2001 through August, 2002" The second amended complaint lists various alleged acts of negligence against Heidlage, and in each instance includes a phrase "including but not limited to the following" or similar language. Thus, Heidlage asserts that the allegations of the second amended complaint are reasonably susceptible of an interpretation that they allege ongoing negligence subsequent to May 1, 2002. Heidlage has brought a counterclaim under M.G.L.c. 93A and c. 176D against Westport for unfair claims settlement practices in which he seeks to recover his attorney's fees and costs of defending this action, and any other losses occasioned by Westport's conduct.

II. Settlement/ADR

Westport has made a settlement proposal to defendants. The parties do not believe that this case is appropriate for non-binding mediation.

III. Proposed Discovery Schedule

The parties propose the following discovery schedule:

1. Rule 26(a)(1) initial disclosures served by May 3, 2006;
2. All motions pursuant to Rule 12 filed by May 18, 2006;
3. All written and oral fact discovery completed by August 18, 2006;

4. Designation of plaintiff's expert(s) by August 18, 2006;
5. Designation of defendants' experts by September 18, 2006;
6. All depositions of experts completed by October 18, 2006;
7. All dispositive motions filed by November 17, 2006

.IV. Other Matters

The parties do not consent to trial by Magistrate Judge.

Respectfully submitted,

Westport Insurance Corporation

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By: /s/rbluestein

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